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Supreme Court, U.S.
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No. _____

In the Supreme Court of the United States

DWAIN LEE KIRKLAND,

Petitioner,

v.

CHRISTOPHER K. TAMPLIN
AND KELLEY TAMPLIN et. al,

Respondents.

On Petition for a Writ of Certiorari
To the Court of Appeals of Georgia

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does the Court of Appeals of Georgia's holding in section 1(a) of their written opinion concerning Tortious Interference with Business Relations violate Plaintiff/Petitioner's rights to the Due Process and/or Jury Trial and/or Equal Protection guarantees of the 14 Amendment to the U.S. Constitution.

2. Does the Court of Appeals of Georgia's holding in section 2 of their written opinion concerning Intentional Infliction of Emotional Distress violate Plaintiff/Petitioner's rights to the Due Process and/or Jury Trial and/or Equal Protection guarantees of the 14th Amendment to the U.S. Constitution.

3. Does the Court of Appeals of Georgia's holding in section 1(b) of their written opinion concerning Interference with Contractual Relations violate Plaintiff/Petitioner's rights to the Property and/or Contract and/or Due Process and/or Jury Trial and/or Equal Protection guarantees of the 14th Amendment to the U.S. Constitution.

4. Does the Court of Appeals of Georgia's holding in sections 1(a), 1(b) and 2 of their written opinion that deprives Plaintiff/Petitioner of summary judgment in his favor violate Plaintiff/Petitioner's rights to the Property and/or Contract and/or Due Process and/or Jury Trial and/or Equal Protection guarantees of the 14th Amendment to the U.S. Constitution.

5. Is it a violation of Due Process of law under the 14th Amendment of the U.S. Constitution to go through the formality of the steps of a judicial process with no actual intent of rendering a true and correct ruling based on the facts of the case and the law.

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U.S. Constitution Amendment XIV, Section 1
O.C.G.A. 16-11-37

* * * * * * * *

Other Authorities:

None

OPINIONS BELOW

Petition for Writ of Certiorari, #S07C1399, denied by Georgia's Supreme Court September 10th, 2007 (App., infra, 1a). Georgia's Court of Appeals, #A07A1225, 10 page decision rendered April 25th, 2007 (App., infra, 2a). Trial court denied Plaintiff/Petitioner's motion for summary judgment, granting defendant's motion for summary judgment December 28th, 2006 (App., infra, 11a).

JURISDICTION

The state court of last resort was The Supreme Court of Georgia. Order denying a Writ of Certiorari was entered September 10th, 2007. This Court's jurisdiction invoked under *28 USCS § 1257 State courts; certiorari,* relevant part: "(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had may be reviewed by the Supreme Court by writ of certiorari where...any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of...the United States."

CONSTITUTIONAL AND STATUTORY PROVISIONS

Article VI, Clause 2, (Supremacy clause) *U.S. Constitution,* relevant part: "[T]he Laws of the United States...shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Amendment V, U.S. Constitution, relevant part: "[N]or be deprived of life, liberty, or property, without due process of law..."

Amendment XIV, Section 1, U.S. Constitution, relevant part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

O.C.G.A. 16-11-37: ***Title 16, Chapter 11, Section 37***

(a) A person commits the offense of a terroristic threat when he threatens to commit any crime of violence or to burn or damage property with the purpose of terrorizing another or of causing the evacuation of a building, place of assembly, or facility of public transportation or otherwise causing serious public inconvenience, or in reckless disregard of the risk of causing such terror or inconvenience. No person shall be convicted under this subsection on the uncorroborated testimony of the party to whom the threat is communicated.

(b) A person commits the offense of a terroristic act when:

(1) He uses a burning or flaming cross or other burning or flaming symbol or flambeau with the intent to terrorize another or another's household; or

(2) While not in the commission of a lawful act, he shoots at or throws an object at a conveyance which is being operated or which is occupied by passengers.

(c) A person convicted of the offense of a terroristic threat or act shall be punished by a fine of not more than $1,000.00 or by imprisonment for not less than one nor more than five years, or both.

(d) A person who commits or attempts to commit a terroristic threat or act with the intent to retaliate against any person for:

(1) Attending a judicial or administrative proceeding as a witness or party or producing any record, document, or other object in a judicial or official proceeding; or

(2) Providing to a law enforcement officer, adult or juvenile probation officer, prosecuting attorney, or judge any information relating to the commission or possible commission of an offense under the laws of this state or of the United States or a violation of conditions of bail,

pretrial release, probation, or parole shall be guilty of the offense of a terroristic threat or act and, upon conviction thereof, shall be punished by imprisonment for not less than five nor more than ten years or by a fine of not less than $50,000.00, or both.

STATEMENT

A. Court Rulings Below

Georgia's Supreme Court denied Plaintiff/Petitioner a Writ of Certiorari September 10th, 2007.

Georgia's Court of Appeals rendered a 10 page opinion holding that prior testimony in a probate hearing and other out of court admissions by a party-opponent Tamplin directly to the Plaintiff were hearsay, that a negative inference can be drawn against the non-movant on summary judgment, that actions qualifying as felony Terroristic Threats delivered during civil litigation are not egregious enough to sustain the tort of Intentional Infliction of Emotional Distress, that dicta pertinent to interference with an at-will employment contract also apply to a simple written contract, that Tamplin (not an heir at law: spouse or child) of a testator could interfere with a simple written contract disposing of a portion of that testator's estate. (See each enumerated question for how the constitutional issues were raised.)

Trial court issued a one line ruling granting Defendant's motion for summary judgment. Trial court judge Hodges did not break the seals on Plaintiff's deposition despite signing a defendant proffered order that he had reviewed all admissible items of record. Georgia's appellate courts have consistently held that not examining all the evidence presented on summary judgment by not opening a deposition is not a violation they will remedy on appeal.

In short, Plaintiff/Petitioner was denied his rights to Property, Contract, Due Process, Equal Protection, and

trial by jury, under the 14th Amendment.

B. FACTS OF THE CASE

Defendant Christopher Tamplin met with my father Leon Kirkland October 1998 and represented to him I had introduced my sister Sheila Meadow, Chris Tamplin's mother, to Scientology and it was going to take all her money. See P. 18, L. 6 to P. 18, L. 9 of Plaintiff's deposition (R. 169-206); also Plaintiff's Fourth Affidavit (R. 261-270, paragraphs 7 & 8) where Plaintiff refreshed his memory and swore to Christopher Tamplin's testimony in the 06/17/2004 Probate hearing.

Defendant Tamplin also stated to A. Leon Kirkland: "He's got no girlfriend. He spends all his time and money on strippers; and his book is so violent, it'll never sell." See Plaintiff's Fourth Affidavit (R. 261-270, paragraphs 9 & 10) where he refreshed his memory and swore to Tamplin's testimony in the 06/17/2004 Probate hearing. Tamplin admits (P. 161, L. 3) he cannot "remember" whether he had this conversation or not. He also stated 22 other times he could not recall or remember things: a well-known technique for committing perjury not easily prosecuted.

Defendants and Court of Appeals in its decision claim Plaintiff cannot testify by affidavit and deposition testimony to the direct statements of both Defendants Christopher K. Tamplin and Kelly Tamplin without engaging in "hearsay." This claim is completely fallacious: The direct statements of the defendants both in the prior probate hearing and elsewhere the Plaintiff directly heard them is an extrajudicial admission by a party-opponent per Black's Law Dictionary and prior precedent.

Regarding the business relationship damage between Plaintiff and A. Leon Kirkland, see Plaintiff's deposition (R. 169-206, P. 19, L. 13 to P. 24 L. 9); also Second Affidavit (R. 242-257) paragraph 7. Regarding the Plaintiff exercising "reasonable diligence" and "due care"

and not discovering any aspect of the fraud or defamation until December 2003, see Second Affidavit (R. 242-257, paragraph 8). Regarding Defendant Kelly Tamplin, the wife of Christopher Tamplin, conspiring with him to commit these acts, see Plaintiff's deposition (R. 169-206, P. 16, L. 15; P. 24, L. 10; P. 24, L. 21); also Second Affidavit (R. 242-257, paragraph 9).

About 05/17/2004, Defendant Kelly Tamplin conspired with 2 unknown females to Intentionally Inflict Emotional Distress on Plaintiff via Terroristic Threats. See Plaintiff's deposition (R. 169-206, P. 9, L. 3 to P. 16, L. 14); also Second Affidavit (R. 242-257, paragraph 10).

About 05/31/2004, Defendant Christopher Tamplin Intentionally Inflicted Emotional Distress on Plaintiff via a Terroristic Threat. See Plaintiff's deposition (R. 169-206, P. 8, L. 5 to P. 9, L. 1 & P. 25, L. 20); also Second Affidavit (R. 242-257, paragraph 11).

Throughout the probate litigation, Defendant Kelly Tamplin repeatedly blocked attempts at a settlement between the Propounder Ruby Kirkland and the Caveator, Plaintiff Dwain Lee Kirkland. See Plaintiff/Appellant's deposition (R. 169-206, P. 10, L. 10; P. 24, L. 21).

Plaintiff and his mother Ruby Kirkland reached a settlement on 05/27/2004, while Defendant Tamplins vacationed in Hawaii. Defendants returned 05/30/2004, interfered with and breeched the settlement. See Plaintiff's deposition (R. 169-206, P. 24, L. 10 to P. 30, L. 9); Plaintiff's Second Affidavit (R. 242-257, paragraph 12).

Defendants filed a motion for summary judgment 10/25/2006 (R. 138-146). Plaintiff filed his Answer 11/22/2006 (R. 220-222). Said Answer specifically answers Defendants Motion (paragraph 2) with a cross- or counter-motion. In the 12/12/2006 motion hearing, Plaintiff twice moved for a continuance (MT P. 2. L. 20; P. 5, L. 22 - 12/12/06) so Defendants could properly respond to his motion; Defendant argued against said continuance (MT P.

3, L. 11 - 12/12/06); it was not granted.

Trial court judge returned summary judgment against Plaintiff 12/28/2006 (R. 306); without breaking seals on Plaintiff's deposition. The third time this judge has done that. A recusal was filed (R. 310-316) though never heard, Georgia's Supreme Court rules consistently that such a violation of will not be remedied on appeal.

Case was appealed to Georgia Court of Appeals. Appellant's brief contained 4 enumerations of error. A 10 page opinion was returned 04/25/2007 wherein all Plaintiff/Petitioner's positions were held invalid as a matter of law. Had the Court of Appeals found any other way, Plaintiff would have won a $1,000,000 judgment based on counsel's failures to file rebuttal evidence: the third time this happened in the Superior and appellate courts of this state. Plaintiff filed a motion for reconsideration, 4 enumerations of error; motion denied.

Plaintiff/Petitioner petitioned Georgia's Supreme Court for a Writ of Certiorari, the same 4 enumerations of error; petition denied 09/10/2007.

C. QUESTION #'s 1 to 5 INCULSIVE

"Pro se pleadings are held to less stringent standards than pleadings that are drafted by lawyers. Evans v. City of Atlanta, 189 Ga. App. 566, 567 (377 SE2d 31) (1988); see *Haines v. Kerner, 404 U. S. 519 (92 SC 594, 30 LE2d 652) (1972),* Dillingham v. Doctors Clinic, 236 Ga. 302 (223 SE2d 625) (1976)." *THOMPSON v. LONG, A91A1008 (201 Ga. App. 480) (1) (411 SE2d 322) (1991).*

Plaintiff/Petitioner is not a member of the bar; has not been formally trained in the law. Per *Haines* above, he requests The Court give him as much leeway as possible.

Raised in the courts below as follows:

Plaintiff's Petition for Certiorari, Supreme Court of Georgia, pages 1 & 2, the introductory statement:

Comes now Plaintiff/Appellant/Petitioner Dwain Lee Kirkland and shows this court that The Court of Appeals has usurped 40 years of precedent and The Federal Rules of Evidence endorsed by The Supreme Court of the United States, in adopting Defendants' fallacious argument that extrajudicial admissions by a party-opponent are hearsay; that The Court of Appeals has usurped the plain language of the law, OCGA 51-1-6, by completely refusing to even acknowledge Plaintiff's argument that where a crime has been committed, damages for Intentional Infliction of Emotional Distress are always recoverable; that The Court of Appeals has again usurped 40 years of precedent by erroneously applying The Supreme of Georgia's holding on an at-will employment contract, to a simple written contract; ...that these rulings are a violation of Appellant's right to substantive due process under the 14th Amendment to the U.S. Constitution; that Plaintiff/Appellant/Petitioner's Motion for Reconsideration arrived physically in the court in the A.M. hours of May 7th, 2007, and was subsequently denied on May 8th, without even being considered: a blatant violation of Appellant's rights under 42 USC 1983; that The Court of Appeals continuously ignored and did not even address the citation and argument in Appellant's Brief and Reply Brief concerning all Appellant's Enumerations of Error: a further violation of Appellant/Petitioner's rights under 42 USC 1983.

Plaintiff's Certiorari, SCOG, Enumeration of Error #4: **"4. Granting of Defendant/Appellees' summary judgment on all counts of the complaint was error.** Defendant's motion: (R. 138-206); Plaintiff's Answer and cross-motion (R. 220-272); Plaintiff's Deposition (R. 169-206.)

"The facts and the law of this case do not support a

summary judgment in favor of Defendant/Appellees; but actually support a summary judgment in favor of Plaintiff/Appellant. In this vein, Plaintiff/Appellant resubmits the argument and authorities of Enumerations 1 to 3 above. The above misapplications of law and fact violate Appellant's right to Due Process, Equal Protection and Trial by Jury protected by the 5th, 7th & 14th Amendments to the U.S. Constitution; they are also an extreme violation of 42 USC 1983."

Plaintiff's Motion for Reconsideration, Court of Appeals of Georgia, page 30, Enumeration of Error #4: "4. Granting of Defendant/Appellees' summary judgment on all counts of the complaint was error. Defendant's motion: (R. 138-206); Plaintiff's Answer and cross-motion (R. 220-272); Plaintiff's Deposition (R. 169-206.)

"The facts and the law of this case do not support a summary judgment in favor of Defendant/Appellees; but actually support a summary judgment in favor of Plaintiff/Appellant. In this vein, Plaintiff/Appellant resubmits the argument and authorities of Enumerations 1 to 3 above. The above misapplications of law and fact violate Appellant's right to Due Process, Equal Protection and Trial by Jury protected by the 5th, 7th & 14th Amendments to the U.S. Constitution; they are also an extreme violation of 42 USC 1983."

In the instant case, Plaintiff objects to the unconstitutional actions of The Court of Appeals of Georgia. In the various questions argued below, it will easily be seen COAG had no intention from the outset of providing a fair and impartial ruling based on the facts and the law of the case. Trial court below also had no intention of providing a fair and impartial ruling based on the facts and the law of the case. Trial court did not break the seals on Plaintiff's deposition, nor is it even likely the case filings were read. This same judge has not broken the seals on 3

depositions in two previous cases where he granted summary judgment against Plaintiff. Plaintiff attempted to recuse both him and the *pro hac vice* who heard his recusal on Case #A07A0863, COAG, now also before this court on Certiorari. COAG addressed only the most innocuous allegations, leaving another dozen in Plaintiff's recusal affidavit unmentioned. Plaintiff also filed a motion to recuse on this case (R. 310-316) though it was never heard, Plaintiff not wishing to pay Defendants' attorney's fees and costs defending against it. What can a litigant do when all 3 judges in the circuit (Plaintiff has attempted to recuse all 3, some twice), and both appellate courts of the state are corrupt. Georgia's Supreme Court has ruled consistently that failure to peruse the evidentiary record (not opening a deposition) on summary judgment is not a violation that will be remedied. SCOG also denied Certiorari on this case and 3 cases prior to it: A07A0663, A07A0863 and A07D0284, which were all legal travesties delivered by the same 3 judge panel of COAG. Simply a judicial conspiracy to deprive certain litigants, based on the Good Ol' Boy Network, of their constitutional rights.

D. QUESTION #1

Does the Court of Appeals of Georgia's holding in section 1(a) of their written opinion concerning Tortious Interference with Business Relations violate Plaintiff/Petitioner's rights to the Due Process and/or Jury Trial and/or Equal Protection guarantees of the 14th Amendment to the U.S. Constitution.

Originally Enumeration of Error #1 in Appellant's Brief, Reply Brief, Motion for Reconsideration and Petition for Certiorari in SCOG; addressed in Section 1(a) COAG opinion. Original wording:

> *1. Denial of Plaintiff/Appellant's summary judgment on his claims constituting Interference With Business*

Relations was error.

Does COAG readily adopt fallacious argument of guilty defendants while completely ignoring argument and citations to the record by Plaintiff? Defendants brief, P. 13 (1): "All of the statements...are hearsay and inadmissible in this case." COAG opinion, P. 5 (1): "Kirkland's evidence...is entirely hearsay in nature." Straight from the mouth of the devil to the mouth of the God?

Appellant spent pages 8 to 11, his reply brief, soundly refuting this argument. Did COAG take up Appellant's 4 page argument and discredit it? Can Appellant's argument be discredited? Did COAG "overrule" Black's law dictionary, Federal Rules of Evidence and 40 years of Georgia case law concerning "[a] prior extra-judicial admission of a party opponent." If so, why is it not stated in the opinion?

The entire argument:

Regarding the statements about Scientology, at P. 18, L. 6 of Plaintiff/Appellant's deposition (R. 169-206) Defendants' counsel Thomas Rogers asked Plaintiff:

"So, do you know of your own personal knowledge that in October '98 Chris Tamplin did have a discussion with your father about Scientology?"

"He told me about two months after my dad died, in a conversation in his truck outside my sister's house, that he did," Plaintiff's response (P. 18, L. 9) (R. 169-206).

What part of this conversation is hearsay? Chris Tamplin's "prior extra-judicial admission of a party opponent" went directly from Chris Tamplin's mouth to Plaintiff's ears and was then identified as an "admission" in Plaintiff's dposition. Plaintiff, by identifying this admission, made a prima facie showing of Interference with Business Relations. Defendant Chris Tamplin must refute same by affidavit or deposition; and he did neither.

Further, in his Fourth Affidavit Plaintiff refreshed

his memory and swore to Tamplin's testimony in the 06/17/2004 Probate hearing. The following are quoted excerpts from that Affidavit (R. 261-270) paragraphs 7 & 8:

7. That Chris Tamplin was properly sworn, testified under oath and was personally examined by me regarding the allegations in Counts 1 to 12 and 13 to 24 of the Complaint in the above-styled action. This examination took place on June 17th, 2004, in a hearing in the Probate Court of Madison County Georgia concerning the Last Will and Testament of my father, Leon Kirkland. That I have used the attached 6 pages, an excerpt of the examination of Chris Tamplin, as a memorandum to refresh my memory; and depose and swear on my oath that they are a true and correct record to the best of my personal knowledge and belief of my examination of Chris Tamplin in the hearing of June 17th, 2004, in the Probate Court--with one exception: Page 161 line 21 reading "ventrals" should be "entrails."

8. Regarding Counts 1 to 12, of the Complaint, and my question on Page 162 Line 8, "Okay. Have you often said Scientology takes your money?"; Chris Tamplin's last clarification of his answer on Page 162 Line 13 was, "But I thought, yeah, maybe at some time or another that it may have taken money from my mom."

"But I thought, yeah, maybe at some time or another that it may have taken money from my mom." Plaintiff again identifies a "prior extra-judicial admission of a party opponent" by Chris Tamplin. Again, the "admission" went directly from Defendant Tamplin's mouth to Plaintiff's ears and was identified in Plaintiff's Fourth affidavit (R. 261-270). Just what part of Chris Tamplin's statement is hearsay? Does COAG negate O.C.G.A. 24-9-69:

Title 24, Chapter 9, Section 69 (24-9-69) Testifying after recollection refreshed; swearing from written memorandum.

A witness may refresh and assist his memory by the use of any written instrument or memorandum, provided he shall finally speak from his recollection thus refreshed or shall be willing to swear positively from the paper.

Does COAG seek to imply that a "prior extra-judicial admission of a party opponent" in another court of law is exempt. Nothing could be further from the truth. A certified copy of the Probate Court transcript of hearing could have been filed, by itself, as evidence of Defendant Tamplin's admissions. Plaintiff simply chose to *"refresh and assist his memory by the use of any written instrument or memorandum"* (the transcript), then swore *"positively from the paper"* in his affidavit.

Plaintiff, again, made a prima facie showing of Interference with Business Relations. Defendant Tamplin neither refuted nor denied by affidavit or deposition. Does COAG assist Defendants/Counsel in their dereliction?

Regarding Tamplin's statement "He's got no girlfriend. He spends all his time and money on strippers; and his book is so violent, it'll never sell," see Plaintiff's Fourth Affidavit (R. 261-270, paragraphs 9 & 10) where Plaintiff again refreshed his memory and swore to Christopher Tamplin's testimony in the 06/17/2004 Probate Court hearing. Paragraphs 9 & 10 of that affidavit:

9. Regarding Counts 13 to 24, of the Complaint, and Chris Tamplin's statement: "He's got no girlfriend. He spends all his time and money on strippers; and his book is so violent, it'll never sell"; my question on Page 160 Line 22 is: "Okay. Did you ever take some version of that same information and give it to my father?"; Chris Tamplin's last clarification of his answer on Page 161

Line 3 was: "Not that I remember, No." "Not that I remember, No" does not specifically state that he did not do this act. It simply states that he does not remember. I counted twenty-two times in Chris Tamplin's examination when he stated that he did not recall or remember things. There are nine examples of this in the six pages attached as Exhibit A. Some of these questions were about direct interactions between Chris Tamplin and myself. I believe that he knowingly did not tell the truth on some of these questions but used "I don't recall" or "remember" in order to avoid being prosecuted for perjury if he was directly contradicted by some item of physical evidence. I have since that time witnessed him recalling something that had happened at least six years prior to 1998, the time frame of the fraud, in crystal clear detail.

10. Hearsay and Counts 1 to 24, of the Complaint. Defendants have alleged in their motion for summary judgment that I rely solely on hearsay regarding Counts 1 to 24 of the Complaint. The above shows emphatically that their allegations are not true. I directly heard and swear to the above testimony.

Per paragraph 9 above:

"Okay. Did you ever take some version of that same information and give it to my father?"

"Not that I remember, No."

"Not that I remember, No." was Chris Tamplin's last clarification of his answer. "Not that I remember, No." does not state Chris Tamplin did not do this act.

Per paragraph 9 above, Plaintiff swore Chris Tamplin's memory failed him "twenty-two" other times in the course of the testimony and that he, Plaintiff believed Chris Tamplin had willfully lost his memory and was not telling the truth.

Plaintiff, again, made a prima facie showing of Interference with Business Relations; Tamplin again neither refuted nor denied it by affidavit or deposition. Did COAG again assist these Defendants/Counsel.

Per paragraph 10 above, Plaintiff also, specifically, under oath, addresses the hearsay allegations: "Defendants have alleged in their motion for summary judgment that I rely solely on hearsay regarding Counts 1 to 24 of the Complaint. The above shows emphatically that their allegations are not true. I directly heard and swear to the above testimony."

Argument from Plaintiff's brief regarding identifying a "prior extra-judicial admission of a party opponent" by affidavit: "On motion for summary judgment '[t]he court is authorized to examine proffered materials extraneous to the pleadings, not for the purpose of trying an issue, but to determine whether there is a genuine issue of material fact to be tried.' 6 Moore's Federal Practice 56.04 [1], p. 2060. Such extraneous matter most often consists of depositions...admissions on file and affidavits, if any. Also among that which may be considered is oral testimony, judicial notice, presumptions, stipulations, concessions of counsel, certified transcript of a court, exhibits and other papers that have been identified by affidavit.... See 6 Moore's Federal Practice 56.11[1.-6]-56.11 [1.-8], pp. 2147-2149." *BODREY v. CAPE et al. (120 Ga. App. 859, 860) (172 SE2d 643).*

"Such extraneous matter most often consists of...and other papers that have been identified by affidavit." Plaintiff "identified by affidavit" a "prior extra-judicial admission of a party opponent." Plaintiff's Fourth Affidavit is legally the same as Plaintiff taking the time to retype the transcript of hearing then swearing to it.

Defendant Tamplin admitted to Plaintiff his involvement in both counts of Interference with Business Relations while under examination in the probate court

and Plaintiff "identified" said admissions "by affidavit."

Again, Defendant Christopher Tamplin filed no rebuttal evidence to Plaintiff's sworn testimony. Neither did Defendant Kelly Tamplin, his wife, who was alleged in the complaint to have conspired in these acts. Defendants also failed to cite a single case where this sworn testimony, contained in an affidavit, was inadmissible as evidence on Summary Judgment. Defendants instead relied on COAG to adopt their fallacious hearsay argument that statements of Defendant Christopher Tamplin cannot be identified by deposition and affidavit and used against him.

Further to the "hearsay" issue, Plaintiff resubmits argument from his COAG reply brief:

"[A]dmission *n.* 1. Any statement or assertion made by a party to a case and offered against that party; an acknowledgment that facts are true. Cf. CONFESSION. ...*Black's Law, 8th Edition (P. 50).*

"[A]dmission by party-opponent. An opposing party's admission, which is not considered hearsay if it is offered against that party and is (1) the party's own statement, in...an individual...capacity; ...or (5) a statement by a coconspirator of the party during the course of and in furtherance of the conspiracy. ...*Black's Law Dictionary, 8th Edition (P. 51).*

"A statement is not hearsay if: (2)Admission by party-opponent. The statement is offered against a party and is (A) the party's own statement, in either an individual or a representative capacity...." *Rule 801(d)(2)(A), Fed. Rules of Evidence.*

Any admission of Defendant Tamplin that was identified by affidavit or deposition testimony of the Plaintiff "is not considered hearsay if it is offered against that party and is (1) the party's own statement...."

"In the case at bar a witness [third party William Sheehan] testified that the defendant made the statement that she did not stop for the stop sign and that it was her

fault. This was evidence of the defendant's negligence.... 'Admissions are evidence, and when a jury bases a verdict thereon, and the trial judge approves the finding, this court will not interfere....' Burk v. Hill, 119 Ga. 38 (45 S. E. 732)." *FAULKNER v. BROWN, 35856 (92 Ga. App. 602, 603) (89 SE2d 583) (1955).*

"Admissions are evidence" and can be testified to even by third party "William Sheehan."

"*[E]xtrajudicial admission.* An admission made outside court proceedings." *Black's Law, 8th Edition (P. 51).*

"(b) A prior extra-judicial admission of a party opponent is not only admissible for purposes of impeachment where in contradiction of the party's testimony on the trial of the case, but may be considered as positive evidence, subject to whatever explanation or reconciliation of the conflicting statements may be offered by the witness and believed by the jury." *SIMS v. HOFF, (106 Ga. App. 626, 627, 629) (127 SE2d 679) (1962).*

The "prior extra-judicial admission[s] of...party opponent" Tamplin "may be considered as positive evidence."

"...[T]he rule that an admission by a party opponent is evidence upon which a verdict may be based 'applies to admissions in pleadings which, after having been withdrawn or stricken by the pleader, are introduced in evidence by the opposite party. [Cits.]'" *M. K. DEVELOPERS, INC. v. McCALL, A91A1438 (202 Ga. App. 224, 225) (414 SE2d 260) (1991).*

"[A]n admission by a party opponent [Defendant Tamplin] is evidence upon which a verdict may be based."

"*[A]doptive admission.* An action by a party that indicates approval of a statement made by another, and thereby acceptance that the statement is true." *Black's Law Dictionary, 8th Edition (P. 51).*

Defendant Kelly Tamplin, an alleged coconspirator in the complaint, not refuting those allegations by

testimony; then failing to refute the admissions of Defendant Christopher Tamplin, by testimony; implicated herself in the same actions admitted by her coconspirator.

"[I]mplied admission. An admission reasonably inferable from a party's action or statement, or a party's failure to act or speak. –Also termed *tacit admission." Black's, 8th Edition (P. 51).*

Defendant Kelly Tamplin made an "*implied admission.* An admission reasonably inferable from...a party's failure to act or speak." Defendant Kelly Tamplin also made extrajudicial admissions of Interference with Contractual Relations (Question #3) that were identified by Plaintiff's deposition and affidavits.

In summation, both Defendants, Chris and Kelly Tamplin; made direct and implied admissions of their guilt on both counts of Interference with Business Relations as alleged in Plaintiff's complaint.

COAG opinion (P. 6, L. 1): "Christopher's bare acknowledgment to Kirkland that he has discussed Scientology with the father is hardly grounds from which to infer that those comments were in any way fraudulent. Absent evidence of fraud, Kirkland could not show that Christopher's actions were improper, an essential element of an action for tortious interference."

Second Affidavit (R. 242-257, paragraph 6) for "evidence" of the fraud: Chris Tamplin's statements were "inaccurate, exaggerated and designed to instill fear...were also known to be a false...are 'actual fraud.'" Christopher Tamplin filed no evidence to rebut this.

Further, COAG drew a negative inference against the non-moving, party-Plaintiff by allowing the premise that Christopher's discussions were in fact neutral and/or truthful in their nature. On summary judgment, only a positive inference may be drawn in favor of, not against, the non-moving party.

Also, can COAG act as Defendants' proxy counsel

and raise objections in COAG when no such objections were raised by Defendants' proper counsel below. In the court below, Defendants' simply sought to negate Plaintiff's allegations with their fallacious hearsay argument, did not submit sworn testimony of any kind whatsoever, much less testimony regarding the "fraudulent" or truthful nature of Chris Tamplin's comments. Nor did Defendants' counsel argue Chris Tamplin's statements concerning Scientology were in fact neutral and/or true.

Fourth Affidavit (R. 261-270, paragraph 8) Plaintiff refreshed his memory and swore to Chris Tamplin's testimony in the 06/17/2004 Probate Court hearing: *"Okay. Have you often said Scientology takes your money?"* P. 162, Line 8. *"But I thought, yeah, maybe at some time or another that it may have taken money from my mom"* was Chris Tamplin's clarification of his answer P. 162 Line 13.

As stated above, Second Affidavit (R. 242-257, paragraph 6),Plaintiff also swore:

Chris Tamplin met with my father Leon Kirkland about October 1998 and represented to him that I had introduced my sister Sheila Meadow, Chris Tamplin's mother, to Scientology and it was going to take all her money, naturally including any that she might inherit from my father Leon Kirkland. This representation was inaccurate, exaggerated and designed to instill fear in Leon Kirkland and procure a share from his will for Chris Tamplin. There was an intent to induce and these representations were also known to be a false by Chris Tamplin and are "actual fraud," containing the legal elements of an actual fraud.

Plaintiff swore in the above affidavit Chris Tamplin's statements were *"inaccurate, exaggerated and designed to instill fear"*, and were *"known to be false...and are 'actual fraud.'"* This testimony was based on Plaintiff's own personal knowledge and admissions made by Chris

Tamplin directly to him in the probate hearing and elsewhere as outlined in Plaintiff's deposition. How much plainer does it have to get? Does Tamplin have to admit the things he said were fraudulent, rather than just refuse to say anything at all? Why is COAG so ready, willing and able to defend these defendants?

Due to Plaintiff's testimony regarding the fraudulent statements of Chris Tamplin, *Sommers Co. v. Moore,* COAG opinion, page 6, does not apply. The following citation is however controlling in this case: "Subjective good faith, standing alone, is not an absolute defense to a claim of tortious interference with business relations, just as 'malice' within the meaning of such a claim need not be prompted by bad faith or personal dislike. ...'The term "malicious" or "maliciously" means any unauthorized interference, or any interference without legal justification or excuse. Personal ill will or animosity is not essential.' [Cit.] Arford at 441; Forehand v. Perlis Realty Co., 198 Ga. App. 165, 166 (400 SE2d 644).

"A party may have a personal, subjective justification or excuse which does not amount to that legal justification or excuse required under the law. For example, a party might contend that he acted in subjective 'good faith' in misunderstanding or misinterpreting the plain language of a contract drafted by him or on his behalf. Ignorance of the law, however, excuses no one, Jabaley v. Jabaley, 208 Ga. App. 179, 180 (1) (430 SE2d 119) (1993), and cannot amount to 'legal' justification or excuse." *VALDEZ v. POWER IND. CONSULTANTS, INC. et al (215 Ga. App. 444, 447) (451 SE2d 87) (1994).*

Georgia's Review Standard: "When a question of law is at issue, as here, we owe no deference to the trial court's ruling and apply the 'plain legal error' standard of review. Glover v. Ware, 236 Ga. App. 40, 45 (3) (510 SE2d 895) (1999). Moreover, '[w]here it is apparent that a trial court's judgment rests on an erroneous legal theory, an appellate

court cannot affirm. [Cit.]' Gwinnett County v. Davis, 268 Ga. 653, 655 (492 SE2d 523) (1997). This is such a case. See Wood v. Dan P. Holl & Co., 169 Ga. App. 839, 841 (2) (315 SE2d 51) (1984)." *SUAREZ et al. v. HALBERT et al., 246 Ga. App. 822, 824 (1) (543 SE2d 733) (2000).*

E. QUESTION #2

Does the Court of Appeals of Georgia's holding in section 2 of their written opinion concerning Intentional Infliction of Emotional Distress violate Plaintiff/Petitioner's rights to the Due Process and/or Jury Trial and/or Equal Protection guarantees of the 14th Amendment to the U.S. Constitution.

Originally Enumeration of Error #2, Appellant's Brief, Reply Brief, Motion for Reconsideration, Petition for Certiorari, SCOG; addressed in Section 2, COAG opinion:

> *2. Denial of Plaintiff/Appellant's summary judgment on his claims constituting Intentional Infliction of Emotional Distress inflicted by Defendants Christopher K. Tamplin and Kelly Tamplin was error.*

See Plaintiff's deposition (R. 169-206, P. 9, L. 3 to P. 16, L. 14); Second Affidavit (R. 242-257, paragraph #10) for threats by Kelly Tamplin. See Plaintiff's deposition (R. 169-206, P. 8, L. 5 to P. 9, L. 1 & P. 25, L. 20); Second Affidavit (R. 242-257, paragraph #11) for threat by Christopher Tamplin.

COAG simply ignored Plaintiff's argument on "terroristic threats." Can it be discredited?

"(a) A person commits the offence of a terroristic threat when he threatens to commit any act of violence or to burn or damage property with the purpose of terrorizing another.... (d) A person who commits or attempts to commit a terroristic threat or act with the intent to retaliate against any person for: (1) Attending a judicial or

administrative proceeding as a witness or party or producing any record, document, or other object in a judicial or official proceeding; or (2) Providing to a law enforcement officer, adult or juvenile probation officer, prosecuting attorney, or judge any information relating to the commission or possible commission of an offense under the laws of this state or of the United States or a violation of conditions of bail, pretrial release, probation, or parole shall be guilty of the offense of a terroristic threat or act and, upon conviction thereof, **shall be punished by imprisonment for not less than five nor more than ten years or by a fine of not less than $50,000.00, or both."** O.C.G.A. 16-11-37. (See the full text of OCGA 16-11-37 at page 2 above.)

The acts alleged were Terroristic Threats; were written up by police that way, do not conform to any other statute. They are felonies. It's obvious Georgia's Legislature puts a high degree of onus on threatening anyone in the course of **"[a]ttending a judicial or administrative proceeding as a witness or party"**; such threatening individual **"shall be punished by imprisonment for not less than five, nor more than ten years, or by a fine of not less than $50,000.00, or both."**

It's also obvious Georgia's Legislature considers this conduct "extreme and outrageous"; that's the reason for such an extreme penalty.

Cite: " **'When any specific act or dereliction is so universally wrongful as to attract the attention of the lawmaking power,** and this concrete wrong is expressly prohibited by law or ordinance, a violation of this law, a commission of the specific act forbidden, is, for civil purposes, correctly called **negligence per se.'" SIMS v. HOFF, 106 Ga. App. 626, 628 (a), (127 SE2d 679) (1962).**

Terroristic Threats are **"so universally wrongful as to attract the attention of the lawmaking power."** These Threats are **"negligence per se." "Negligence per se"**

always supports Negligent Infliction of Emotional Distress.

The threats in this case are directly related to "[a]ttending a judicial or administrative proceeding as a witness or party." One threat was made regarding evidence used in ongoing litigation at that time: "That stuff you keep in your car." Another related to "records" being filed with the "probate court," the venue of said litigation. The third regarded a possible settlement on the litigation in the court: "What goes around comes around. This is all gonna come back to you someday"; in the most murderous tone of voice the Plaintiff ever heard. Yet COAG simply brushes off the possibility of three felonies: "they are generally considered a common vicissitude of ordinary life." What COAG calls "a common vicissitude of ordinary life" is what the Georgia Legislature considers a RICO violation:

O.C.G.A. 16-14-3:
As used in this chapter, the term:
***
(9)(A) "Racketeering activity" means to commit, to attempt to commit, or to solicit, coerce, or intimidate another person to commit any crime which is chargeable by indictment under the following laws of this state:
***
(xxxi) Code Section 16-11-37, relating to terroristic threats and acts;

According to COAG, being victimized by RICO felons is just "a common vicissitude of ordinary life."

Cite: "We cannot approve the dismissal of appellant's remaining claims simply by labeling them a cause of action for 'intentional infliction of emotional distress,' where the complaint alleges an established tort -- wrongful foreclosure -- and seeks damages pursuant to OCGA 51-12-6 for mental distress as a result of its intentional commission." *CLARK v. WEST et al, A90A0096*

(196 Ga. App. 456, 458) (395 SE2d 884) (1990).

Plaintiff asks the same rule regarding an **"established tort" be applied to the "specific act or dereliction...so universally wrongful as to attract the attention of the lawmaking power":** Terroristic Threats, O.C.G.A. 16-11-37 (d) (1). Sims v. Hoff supra says it's so. Has Sims been overruled? Sims is the law, Sims requires it; so does the Official Code of Georgia Annotated:

O.C.G.A. 51-1-6:

When the law requires a person to perform an act for the benefit of another or to refrain from doing an act which may injure another, although no cause of action is given in express terms, the injured party may recover for the breach of such legal duty if he suffers damage thereby.

Per Sims supra, ***"the injured party may recover for the breach of such legal duty"*** via **"negligence per se'**; and of course Negligent Infliction of Emotional Distress.

COAG, page 10, line 3, the opinion: "nor did he have any competent evidence that either of the two defendants arranged for the phone calls." Plaintiff's Second Affidavit (R. 242-257, paragraph #10):

10. Regarding Counts 25 to 31 of the Complaint, Defendant Kelly Tamplin had a conversation with me on 05/17/2004, some time around noon, from her place of employment. The conversation was about the fraud of Counts 1 to 12 and 13 to 24 of the Complaint. She became upset because I wouldn't agree with what she was saying, referred to Scientology as a "Psycho Religion" and hung up the phone. ...It's worth noting that around December 2003, Chris Tamplin had seen the materials in the trunk of my car and commented on them. No one else had taken note of them to my knowledge. My mother, my sister and Chris

and Kelly Tamplin were also the only people aware that I had a single arrest, with charges dropped, and an institutionalization pertaining to drug use in 1973 at the age of 17.

Plaintiff received the first telephone threat within an hour of Kelly Tamplin's "psycho religion" comment. The second a few hours after. Chris Tamplin was the only individual ever to note the evidence in Plaintiff's car. Is circumstantial evidence not "competent evidence" worthy of establishing a genuine issue of material fact? Has the use of "circumstantial evidence" also been overruled? One can only assume the only evidence that constitutes "competent evidence" in the opinion of COAG is a direct confession of guilt by the tort-feasor.

This threat to steal Plaintiff's property from the trunk of his car is also a Terroristic Threat, a felony. Per *Sims* supra, it is negligence per se thus supporting Negligent Infliction of Emotional Distress. The "extreme and outrageous" nature of a committed felony within the context of a RICO conspiracy also supports Intentional Infliction of Emotional Distress.

Georgia's Standard of Review: "'[P]lain legal error....'" SUAREZ et al. v. HALBERT et al., A00A1240, 246 Ga. App. 822, (543 SE2d 733) (2000).

F. QUESTION #3

Does the Court of Appeals of Georgia's holding in section 1(b) of their written opinion concerning Interference with Contractual Relations violate Plaintiff/Petitioner's rights to the Property and/or Contract and/or Due Process and/or Jury Trial and/or Equal Protection guarantees of the 14th Amendment to the U.S. Constitution.

Originally Enumeration of Error #3, Appellant's Brief, Reply Brief, Motion for Reconsideration, Petition for Certiorari, SCOG; addressed in Section 1(b), COAG

opinion. Original wording:

3. Denial of Plaintiff/Appellant's summary judgment on his claims constituting Interference with Contractual Relations was error.

See Plaintiff/Appellant's deposition (R. 169-206, P. 24, L. 10 to P. 30, L. 9); Second Affidavit (R. 242-257, paragraph 12).

Citation and argument from original brief:

Cite: "In a well-considered and strongly worded opinion in Luke v. DuPree, 158 Ga. 590, 595-597 (124 S. E. 13), the Supreme Court said: 'It is actionable maliciously or without justifiable cause to induce one to break his contract with another to the damage of the latter . . . The theory of this doctrine is that the parties to a contract have a property right therein, which a third person has no more right maliciously to deprive them of, or injure them in, than he would have to injure their property. Such an injury amounts to a tort for which the injured party may seek compensation by an action in tort for damages.'

" 'An examination of the authorities cited above will show that the term "malicious" or "maliciously" means any unauthorized interference, or any interference without legal justification or excuse. ...It is unlawful for others, without lawful excuse, to induce the maker of a contract to break it, or to aid him in its breach; and for the maker and others to combine to break it is a conspiracy, which entitles the other party to the contract to his action against the conspirators for any damage which he may sustain.' (Citations Omitted.) BAKER v. AMERICAN OIL COMPANY, 35255, (90 Ga. App. 662, 666) (83 SE2d 826) (1954).

Cite: " 'The word "procure" as here used, does not require the lending of assistance in the actual perpetration of the wrong "done by another"; but if one, acting only

through advice, counsel, persuasion, or command, succeeds in procuring any person to commit an actionable wrong, the procurer becomes liable for the injury, either singly or jointly, with the actual perpetrator. [Cits.]'" *MELTON v. HELMS (83 Ga. App. 71, 73) (62 SE2d 663) (1950).*

Shouldn't COAG discredit Appellant's citation and argument before progressing to Appellees'? Appellant's argument was simply ignored while COAG embraced Appellees'. Have *Baker v. American* and *Melton v. Helms,* supra, been overruled? If so, why doesn't COAG state so?

COAG neither confirms nor denies Appellant's argument but takes up Appellees' quotation of Summers Co. v. Moore, 275 Ga. App. 65 (621 SE2d 789) (2005); which cites Disaster Services, Inc. v. ERC Partnership et al., (228 Ga. App. 739) (492 SE2d 526) (1997); which cites American Buildings Company et al. v. Pascoe Building Systems, Inc. (260 Ga. 346) (392 SE2d 860) (1990), a SCOG ruling.

"When the competitor solicits employment applications that the plaintiff's at-will employees respond to, this too is a matter of fair competition. This Court has, however, 'recognize[d] there are limits to the kinds of inducement [of at-will employees] which may be permitted ...[and have] adopt[ed] the theory of privilege as set out in the Restatement, Torts, $768, including the limitations upon which the privilege rests.' [Cits.] The competitor's privilege is lost when an illegal restraint of trade or competition under federal or state statutes is created or continued or when wrongful means in the solicitation of employees are utilized. See Orkin, 240 Ga. at 666; E. D. Lacey Mills, 183 Ga. App. at 363; Nager v. Lad 'n Dad Slacks, 148 Ga. App. 401, 402 (251 SE2d 330) (1978). Such wrongful means generally involve predatory tactics such as physical violence, fraud or misrepresentation, defamation, use of confidential information, abusive civil suits, and unwarranted criminal prosecutions." *American Buildings Company et al. v. Pascoe Building Systems, Inc.,*

S90A0103 (260 Ga. 346, 348-349) (392 SE2d 860) (1990).

American by SCOG was never meant to apply to any contract except "at-will employment." And yet "...predatory tactics such as physical violence, fraud or misrepresentation, defamation, use of confidential information, abusive civil suits, and unwarranted criminal prosecutions" was applied to this case (Page 7, Line 4, COAG opinion).

Applying this portion of the *American* ruling to anything but at-will employment contracts is clearly erroneous. Confer *Kitfield et al. v. Henderson, Black & Greene et al., A97A1717 (231 Ga. App. 130) (1998),* a proper application of the "predatory tactics" quotation: "'The privilege of fair competition protects the actions of one who . . . solicits a competitor's at will employees provided the standards set forth in Restatement of Torts, 768 are followed. Those standards are: (1) the relation concerns a matter involved in the competition between the actor and the competitor; (2) the actor does not use improper means; (3) the actor does not intend thereby to create or continue an illegal restraint of competition; and (4) the actor's purpose is at least in part to advance its interests in competition with the other.' (Citations, punctuation and footnote omitted.) [Cits.] See also American Bldgs. Co. v. Pascoe Bldg. Systems, 260 Ga. 346, 348 (392 SE2d 860) (1990). 'Such wrongful means generally involve predatory tactics such as physical violence, fraud or misrepresentation, defamation, use of confidential information, abusive civil suits, and unwarranted criminal prosecutions.' Id. at 349." *KITFIELD et al. v. HENDERSON, BLACK & GREENE et al. (231 Ga. App. 130, 133) (498 SE2d 537) (1998)*

Ironically, Presiding Judge Blackburn, the instant case, concurred on *Kitfield.*

Appellees' brief, page 20: "Any alleged contract between Ruby Kirkland and the Appellant wherein the

estate of Leon Kirkland was involved would make the Appellees privileged."

COAG opinion (P. 6, L. 8): "The second tortious claim alleges that Christopher and Kelley persuaded Kirkland's mother to breach a settlement agreement to pay Kirkland "a larger portion of his fathers' estate." From the mouth of the devil, to the mouth of God? Does COAG believe every lawyer it encounters without checking the record? Facts are clauses 1 & 3 (Plaintiff's Second Affidavit, R. 242-257, Exhibit B, page 2) had solely to do with the income and estate of Ruby P. Kirkland; not mentioning "the estate of Leon Kirkland." Ruby Kirkland has her own income, $210,000 annually; her own estate, $1,400,000, entirely exclusive of Leon Kirkland's 1,500,000. Total marital assets: $2,900,000. COAG assumes women do not have income, own property? Nowhere is "his fathers' estate" mentioned. Only Ruby Kirkland's income and estate were involved. Defendants have no privilege regarding Ruby Kirkland. Regarding her estate, there are only two classes of people: Heirs at Law and "other." Chris Tamplin's mother, an Heir at Law, is still living; Chris Tamplin falls into "other," with no more rights to the estate of Ruby Kirkland than the Humane Society. Only clause #2 of the contract (Plaintiff's Second Affidavit, R. 242-257, Exhibit B, page 2) "estate tax return" had anything at all to do with the estate of Leon Kirkland; and Appellees, not being a legal party to the actual litigation in probate court, had no legal relationship to that clause of the contract.

In summation, *Disaster Services'* "predatory tactics" quotation is error when applied to anything but at-will employment contracts. **BAKER v. AMERICAN OIL CO. (90 Ga. App. 662, 666) (83 SE2d 826) (1954)** is controlling. As stated above, Defendants had absolutely no privileged relationship of any kind with the contract between Ruby Kirkland and Plaintiff Dwain Lee Kirkland. Further, Defendants supplied the court with incriminating

affidavits, actually telling the truth about giving "advice" while the physical evidence tells the truth about Kelly Tamplin lending "assistance." Defendants prosecuted themselves. Plaintiff is due a summary judgment in his favor on the Interference with Contractual Relations claim.

Georgia's Standard of Review: "'[P]lain legal error....'" SUAREZ et al. v. HALBERT et al., A00A1240, 246 Ga. App. 822, (543 SE2d 733) (2000).

G. QUESTION #4

Does the Court of Appeals of Georgia's holding in sections 1(a), 1(b) and 2 of their written opinion that deprives Plaintiff/Petitioner of summary judgment in his favor violate Plaintiff/Petitioner's rights to the Property and/or Contract and/or Due Process and/or Jury Trial and/or Equal Protection guarantees of the 14th Amendment to the U.S. Constitution.

Plaintiff raised 5th, 7th & 14th Amendment objections, page 30, COAG Motion for Reconsideration. See QUESTIONS 1-5 INCLUSIVE supra for objection, SCOG.

Originally Enumeration #4 in Appellant's Brief, Reply Brief, Motion for Reconsideration, Petition for Certiorari, SCOG. Original wording:

> *4. Granting of Defendant/Appellees' summary judgment on all counts of the complaint was error.*

Proper legal rulings in 3 sections of COAG's opinion would have resulted in summary judgment favoring Plaintiff. In this vein, Plaintiff resubmits the argument and citations of Questions 1 to 3 above; also:

"The trial court can grant sua sponte summary judgment under Georgia law. [Cit.] In fact, the trial court can grant summary judgment to the 'non-moving party provided that the grant is proper in all other respects. (Cit.)' [Cits.] . . . "If the record demands such a judgment,

it would be proper." [Cits.] ***GEORGIA RECEIVABLES, INC. v. TE, GEORGIA RECEIVABLES, INC. v. LEWIS, A99A1568-1569, (240 Ga. App. 292) (523 SE2d 352) (1999).***

"[T]he record demands" it; it [is] proper."

Georgia's Standard of Review: "'[P]lain legal error....'" SUAREZ et al. v. HALBERT et al., A00A1240, 246 Ga. App. 822, (543 SE2d 733) (2000).

H. QUESTION #5

Is it a violation of Due Process of law under the 14th Amendment of the U.S. Constitution to go through the formality of the steps of a judicial process with no actual intent of rendering a true and correct ruling based on the facts of the case and the law.

"...[P]rocess which is a mere gesture is not due process." MULLANE v. CENTRAL HANOVER TR. CO., 339 U.S. 306 (1950). COAG's appeal is a mere gesture.

I. OTHER RELIEF

Plaintiff/Petitioner also prays for such other and further relief as may be due and granted under the rules of this court and the laws of the United States.

REASONS FOR GRANTING THE PETITION

Rule of Law versus Rule by Corruption.

CONCLUSION

The Petition for a writ of certiorari should be granted.

Respectfully submitted,

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December 2007, February 2008

SUPREME COURT OF THE STATE OF GEORGIA

CLERK'S OFFICE

ATLANTA

Date: September 10, 2007

Dwain Lee Kirkland
P.O. Box 773
Hull, GA 30646

Case No. S07C1399

DWAIN LEE KIRKLAND v. CHRISTOPHER K. TAMPLIN et al.

COURT OF APPEALS CASE NO. A07A1225 S07C1519 S07C1385

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur.

Therese S. Barnes, Clerk

THIRD DIVISION
BLACKBURN, P. J.,
RUFFIN and BERNES, JJ.

NOTICE: Motions for reconsideration must be physically received in our clerk's office within ten days of the date of decision to be deemed timely filed. (Court of Appeals Rules 4 and 37, September 5,2002) http://www.gaappeals.us/rules/

April 25, 2007

In the Court of Appeals of Georgia

A07A1225. KIRKLAND v. TAMPLIN et al. BL-062

BLACKBURN, Presiding Judge.

Plaintiff Dwain Lee Kirkland appeals the summary judgment granted to defendants Christopher and Kelley Tamplin on Kirkland's three claims against these defendants. As to the two claims for tortious interference, we hold that Kirkland failed to present competent evidence of the element of improper means. As to the claim for intentional infliction of emotional distress, we hold that defendants' alleged
conduct was not extreme and outrageous. Accordingly, we affirm.

Summary judgment is only proper when there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. OCGA § 9-11-56 (c). A de novo standard of review applies to an appeal from a grant of summary judgment,

and we view the evidence, and all reasonable conclusions and inferences drawn from it, in the light most favorable to the nonmovant. *Matjoulis v. Integon Gen. Ins. Corp.*[1]

So viewed, the evidence shows that Kirkland filed a complaint against his nephew Christopher and against Christopher's wife Kelley, in which he set forth three claims. The first claim alleged that Christopher had tortiously interfered with Kirkland's business relations with Kirkland's father before the father's death when (a) Christopher falsely told Kirkland's father (Christopher's grandfather) that Kirkland had introduced Christopher's mother (Kirkland's sister) to Scientology and that this religion was going to take her money, and (b) Christopher falsely told
Kirkland's father that Kirkland had no girlfriend, that Kirkland spent all his time and money on strippers, and that Kirkland had written a book that would never sell because it was so violent. Kirkland alleged that these fraudulent comments damaged the business relationship between himself and his father, causing the father to renege on some financial commitments to assist Kirkland.[2]

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[1] *Matjoulis v. Integon Gen. Ins. Corp.*, 226 Ga. App. 459 (1) (486 SE2d 684) (1997).

[2] Kirkland emphasizes in his appellate reply brief that this claim is a tortious interference claim, not simply a fraud claim.

The second claim alleged that Christopher and Kelley interfered with a settlement agreement between

Kirkland and Kirkland's mother, in which the mother had agreed to pay Kirkland increased monies from the estate of Kirkland's father. Kirkland maintained that Christopher and Kelley persuaded the mother to breach that contract by not paying the money.

The third claim alleged that Christopher and Kelley intentionally inflicted emotional distress upon Kirkland when (a) Christopher had told Kirkland, "What goes around comes around" and "This will all come back to you one day," while discussing Kirkland's actions in getting the mother to agree to the estate payments, and (b) two separate callers (whom Kirkland could not identify) phoned Kirkland and informed him that he should remove papers from his car if he did not want them stolen and that Kirkland's psychological and criminal records had been filed with the
probate court overseeing the administration of his late father's estate. Christopher and Kelley moved for summary judgment on all claims, and when responding to that motion, Kirkland himself also moved for summary judgment in his favor on all claims. The court granted defendant's motion for summary judgment in its entirety, making it unnecessary to address Kirkland's motion. Kirkland appeals,

claiming the court erred in granting summary judgment to the defendants as to his three claims.

1. *Tortious Interference Claims.* Kirkland's first two claims assert tortious interference with business relations and with contractual relations. We hold that the undisputed evidence shows that Kirkland cannot prove an essential element of these claims.

> Tortious interference claims, whether asserting interference with contractual relations, business relations, or potential business relations, share certain common essential elements: (1) improper action or wrongful conduct by the defendant without privilege; (2) the defendant acted purposely and with malice with the intent to injure; (3) the defendant induced a breach of contractual obligations or caused a party or third parties to discontinue or fail to enter into an anticipated business relationship with the plaintiff; and (4) the defendant's tortious conduct proximately caused damage to the plaintiff.

Disaster Svcs. v. ERC Partnership.[3] See *The Boeing Co. v. Blane Intl. Group.*[4]

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[3] *Disaster Svcs. v. ERC Partnership,* 228 Ga. App. 739, 740 (492 SE2d 526) (1997).

[4] *The Boeing Co. v. Blane Intl. Group,* 276 Ga. App. 672, 675 (1) (624 SE2d 227) (2005).

(4)

(a) Tortious Interference with Business Relations. The first claim, which alleges tortious interference with Kirkland's business relations with his father, fails for the simple reason that Kirkland's evidence of Christopher's alleged ftaudulent comments to the father is entirely hearsay in nature, is not subject to any hearsay exception, and is therefore inadmissible and non-probative. "In summary judgment proceedings[,] the rules on admissibility of evidence apply, and hearsay has no probative value unless it is part of the res gestae or

otherwise admissible." *Hodges v. Putzel Electric Contractors.*[5]

The only evidence Kirkland submitted to support his allegation that Christopher made ftaudulent comments to Kirkland's father about Scientology and that Christopher made fraudulent comments about Kirkland's personal life and habits was Kirkland's testimony that his sister had recounted these comments to Kirkland. Indeed, this evidence appears to be double hearsay, since there is no evidence that the sister was even present when Christopher allegedly made these comments to the father. In any case, "self-serving hearsay. . . has no probative value on summary

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[5] *Hodges v. Putzel Electric Contractors,* 260 Ga. App. 590, 594 (1) (580 SE2d 243) (2003).

judgment." *Adams v. Gay.*[6] Christopher's bare acknowledgment to Kirkland that he had discussed Scientology with the father is hardly grounds from which to infer that those comments were in any way fraudulent. Absent evidence of fraud, Kirkland could not show that Christopher's actions were improper, an essential element of an
action for tortious interference. See *Sommers Co. v. Moore.*[7] Because the only evidence of the allegedly wrongful actions was inadmissible hearsay,[8] the trial court did not err in granting summary judgment on this claim.

(b) *Tortious Interference with Contractual Relations.* The second tortuous interference claim alleges that Christopher and Kelley persuaded Kirkland's mother to breach a settlement agreement to pay Kirkland a larger portion of his father's estate. Once again, the element of

improper conduct is missing from this tort. "[P]laintiff must show more than that the defendant simply persuaded a person to break a contract. *Sommers Co.* [, supra, 275 Ga. App. at 605-606]; *Architectural Mfg.*

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[6] *Adams v. Gay,* 270 Ga. App. 65, 66 (1) (606 SE2d 26) (2004).

[7] *Sommers Co. v. Moore,* 275 Ga. App. 604, 605-606 (621 SE2d 789) (2005).

[8] In an affidavit, Christopher expressly denied making any statements to Kirkland's father about Kirkland's personal life or habits.

Co. v. Airotec, Inc.[9]" *Coloplast Corp. v. American Breast Care, L.P.*[10] Indeed, the plaintiff must adduce evidence of "improper action or wrongful conduct," which our courts have defined as "' constitut(ing] conduct wrongful in itself; thus, improper conduct means wrongful action that generally involves predatory tactics such as physical violence, fraud or misrepresentation, defamation, use of confidential information, abusive civil suits, and unwarranted criminal prosecutions.'" *Sommers,* supra, 275 Ga. App. at 606 (quoting *Disaster Svcs.,* supra, 228 Ga. App. at 741-742.)

Here, we have only the bare evidence that Christopher and Kelley persuaded Kirkland's mother to breach the contract, which alone is insufficient to show tortious interference.

Moreover, as the grandson of Kirkland' s father, Christopher and his wife stood to inherit from the grandfather's estate. Therefore, they had a bona fide economic interest in the agreement between the

administrator of the estate and Kirkland as to amounts to be paid out from that estate. Where the defendant has "a bona fide economic interest in the contract or relationship with one of the parties to the

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[9] *Architectural Mfg. Co. v. Airotec, Inc.*, 119 Ga. App. 245, 249 (1) (166 SE2d 744) (1969).

[10] *Coloplast Corp. v. American Breast Care, L. P.*, 2006 U. S. App. LEXIS 30863 (11th. Cir. 2006).

contract," he is not a stranger to the contract and acts with privilege with regard to that contract. *Disaster Svcs.*, supra, 228 Ga. App. at 741. Because one of the essential elements of tortious interference is a showing that the defendant was acting without privilege, this is a second reason why the trial court correctly granted summary judgment to the defendants here. See *LaSonde v. Chase Mortgage Co.*[11]

2. *Intentional Infliction of Emotional Distress.* Kirkland's remaining claim is that Christopher and Kelley maliciously inflicted emotional distress upon him when (a) Christopher told Kirkland in a "murderous tone" that "[w]hat goes around comes around" and that "[t]his will all come back to you one day," which all related to Kirkland's efforts to have his mother pay him more from the estate, and (b) two unidentified callers phoned Kirkland and informed him that he should remove his litigation materials from his car to prevent their theft and that the probate court had received his criminal and psychological records. To prove an action for intentional infliction of emotional distress, "a plaintiff must demonstrate that: (1) the conduct giving rise to the

claim was intentional or reckless; (2) the conduct was extreme and outrageous; (3) the conduct caused

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[11] *LaSonde v. Chase Mortgage Co.*, 259 Ga. App. 772, 773 (1) (577 SE2d 822) (2003).

emotional distress; and (4) the emotional distress was severe." *Frank v. Fleet Finance, Inc. of Ga.*[12] Significantly, the defendant's conduct "must be so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." (Punctuation omitted.) *Martin v. North American Van Lines.*[13] "'Whether a claim rises to the requisite level of outrageousness and egregiousness to sustain a claim for intentional infliction of emotional distress is a question of law.'" *Frank,* supra, 238 Ga. App. at 318.

Under these standards, Kirkland's two allegations of intentional infliction of emotional distress fail. With regard to the statements that "[w]hat goes around comes around" and that "[t]his will all come back to you one day," we hold as a matter of law that such statements do not rise to the requisite level of outrageousness and egregiousness to sustain a claim for intentional infliction of emotional distress. Such common expressions from family members, though given in a threatening tone of voice, are generally considered a common vicissitude of ordinary life and are certainly not "'so outrageous in character, and so extreme in degree, as to go beyond

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[12] *Frank v. Fleet Finance, Inc. of Ga.*, 238 Ga. App. 316, 318 (518 SE2d 717) (1999).

[13] *Martin v. North American Van Lines,* 226 Ga. App. 187, 190 (2) (c) (485 SE2d 815) (1997).

all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.'" *Jarrard v. United Parcel SVC.*[14] With regard to the phone calls, Kirkland admitted that he could not identify the callers, nor did he have any competent evidence that either of the two defendants arranged for the phone calls. Nor do these statements rise to the requisite level of outrageousness.

Accordingly, the trial court did not err in granting summary judgment on the intentional- infliction-of-emotional-distress claim.

3. We exercise our discretion to deny defendants' two motions for sanctions.

Judgment affirmed. Ruffin and Bernes, JJ., concur.

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[14] *Jarrard v. United Parcel Svc.,* 242 Ga. App. 58, 59 (529 SE2d 144) (2000).

IN THE SUPERIOR COURT OF MADISON COUNTY
STATE OF GEORGIA

DWAIN LEE KIRKLAND,)

Plaintiff,
vs.)CIVIL ACTION NO.:
05-MV-977-H

CHRISTOPHER K. TAMPLIN AND
KELLEY TAMPLIN AND OTHERS,

Defendants.)

FINAL ORDER

The Defendants' Motion for Summary Judgment having come before this Court, and the Court having reviewed the parties' briefs and all admissible matters of record in this action, and having heard oral argument from counsel for Defendants and from Plaintiff, pro se;

The Court finds that there exists no genuine issue as to any material fact in this case, and

IT IS HEREBY ORDERED that Defendants' Motion for Summary Judgment is granted.

SO ORDERED this 28th day of December, 2006.

(signed)

The Honorable Thomas L. Hodges
Judge, Superior Court
Madison County, Georgia

FILED IN OFFICE
2006 Dec 28 01:06 PM
MICHELE H. STRICKLAND
CLERK OF COURT

MADISON, GEORGIA
2006-10498
(STAMPED)